IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1595 OF 2006

Shri Ajay Singh @ Pappu Govardhan Singh Shekhavat, Age 30 years, residing at Ulhasnagar, Dist. Thane, (At present detained in Yerwada Central Prison, Pune.) ... Petitioner

Versus

1. Shri D. Shivanandhan, Commissioner of Police, Thane.
2. The State of Maharashtra (Through the Secretary, Home Department (Spl), Mantralaya, Mumbai.
3. The Superintendent, Yerwada Central Prison, Nashik ... Respondents

Mr. U.N. Tripathi for the petitioner.

Ms. A.S. Pai, A.P.P. for the State.

CORAM : SMT. RANJANA DESAI & ANOOP V. MOHTA, JJ.

DATED : 13TH MARCH, 2007.

ORAL JUDGEMENT:- (Per Smt. Ranjana Desai, J.)

1. The petitioner is detained under the order of detention dated 8/5/2006 issued under the provisions of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 (for short, "the said Act"). The order of detention is issued by respondent 1 - the Commissioner of Police, Thane, with a view to preventing

the petitioner from acting in any manner prejudicial to the maintenance of public order. The order of detention along with the grounds of detention and the material in support thereof was served on the petitioner on 13/5/2006 and the petitioner was detained. In this petition there is a challenge to the said order of detention.

2. The order of detention rests on one C.R. being C.R. No.I-50 of 2006 registered under sections 452, 323, 504, 506(II), 427 read with section 34 of the Indian Penal Code (for short, "IPC") at Ulhasnagar Police Station. In connection with this case, the petitioner was arrested on 14/3/2006. He was ordered to be released on bail on 15/3/2006. He availed of the bail facility on the same day. The detention order also rests on two in-camera statements. The in-camera statements of witnesses "A" and "B" were recorded on 10/3/2006. In his statement, witness "A" has stated about an incident which had taken place on 4/3/2006 in which the petitioner is involved. In his statement, witness "B" has deposed about an incident which had taken place on 5/3/2006 in which the petitioner is involved. The incidents alleged in the grounds of detention indicate that the petitioner is indulging in extortion activities. On the basis of the said incidents and the material in support thereof, the detaining authority was satisfied that the petitioner has become a menace to the society and his activities have unleashed a waive of terror in the area. He was further satisfied that with a view to preventing the petitioner from acting in any manner prejudicial to the maintenance of public order, it is necessary to detain him. Hence, he issued the impugned order of detention.

3. We have heard Mr. Tripathi, the learned counsel appearing for the petitioner. Mr. Tripathi assailed the impugned order only on one ground. He submitted that the detenu had addressed a representation dated 5/6/2006 to the State Government through his lawyer. In that representation, the detenu has also made a request for supply of certain documents. The said representation was rejected by the State Government on 17/6/2006. However, the rejection reply was communicated to the petitioner's advocate on 28/6/2006. The learned counsel urged that there is no acceptable explanation for delay in communication and, hence, the impugned order of detention deserves to be set aside.

4. In this connection, the learned counsel relied on the judgment of this court in ***Criminal Writ Petition No.295 of 2005 (Parveen Iqbal Mandai v. M.N. Roy & Ors.) decided by the Division Bench of this court (S.B. Mhase and S.R. Sathe, JJ) dated 16/8/2005***. The learned counsel urged that it is open to the detenu to make a representation combining two prayers. He can request for revocation of detention order and he can also pray for supply of documents. In this connection, the learned counsel relied on the judgments of the Supreme Court in ***Smt. Shalini Soni v. Union of India & Ors., AIR 1981 SC 431*** and ***Kubic Darusz v. Union of India & Ors., (1990) 1 SCC 568***.

5. We have also heard Ms. Pai, the learned A.P.P. for the State. She

drew our attention to the affidavit of Mr. D. Sivanandhan, the Commissioner of Police, Thane and the affidavit of Mr. W.H. Bansode, the Under Secretary to the Government of Maharashtra, Home Department (Special), Mantralaya, Mumbai. The learned A.P.P. submitted that the petitioner had requested for supply of documents. Therefore, though his representation was rejected on 17/6/2006, the communication was sent on 20/6/2006 after examining his request for documents. She submitted that so far as delay between 17/6/2006 to 20/6/2006 is concerned, the same has been explained by Mr. Bansode, the Under Secretary to the Government of Maharashtra, in his affidavit. In support of her submission, the learned A.P.P. relied on the judgment of this court to which one of us is a party (Smt. Ranjana Desai, J.) in ***Criminal Writ Petition No.2557 of 2004 decided on 9/8/2005 (Shadab Siddiq Khan v. A.N. Roy & Ors.)***.

6. Having perused the petition and the affidavits in reply and having considered the judgments of the Supreme Court, we are of the opinion that the submission of Mr. Tripathi must be upheld. There is no dispute about the fact that the representation of the detenu was sent by his lawyer on 5/6/2006. It appears from the affidavit of the Under Secretary to the Government of Maharashtra that the representation was received in the department on 5/6/2006. Para-wise remarks on the said representation were called for from the detaining authority. Para-wise comments were received by the department on 15/6/2006. Thereafter, the representation was scrutinized and processed through the concerned assistant. It was forwarded to the Under Secretary on

15/6/2006. The Under Secretary made his endorsement on 16/6/2006 and forwarded it to the Deputy Secretary. The Deputy Secretary made his endorsement on 17/6/2006 and forwarded it to the Additional Chief Secretary (Home) for his consideration. As per Instruction No.4 regarding the Business of the Government issued in exercise of the powers conferred by Rule 15 of the Maharashtra Government Rules of Business made under Article 166 of the Constitution of India, the State Government has delegated its power to take decision on the matters pertaining the said Act to the Additional Chief Secretary (Home) vide Government Order dated 5/1/2004. Therefore, the Additional Chief Secretary (Home) carefully considered the representation of the detenu along with the record of the case and the para-wise comments and rejected the representation on 17/6/2006.

7. It is further stated in the affidavit that since the petitioner/detenu had requested that documents be supplied to him, the concerned assistant submitted the representation to the Under Secretary on 20/6/2006. 18/6/2006 was a holiday. The Under Secretary put his endorsement and forwarded the representation to the Deputy Secretary on 21/6/2006. The Deputy Secretary approved the draft and returned it to the Under Secretary on 23/6/2006. 24/6/2006 and 25/6/2006 were holidays. The Under Secretary was on leave on 26/6/2006. The papers were received on 27/6/2006. It appears from the rejection reply that the State Government was of the opinion that the documents had already been supplied to the petitioner as relied upon documents and, hence, it was not necessary to furnish those documents to

the petitioner. Thereafter, on 28/6/2006, a composite reply was communicated to the petitioner and also to the lawyer. The petitioner was informed that his representation was rejected. As regards his request for supply of documents, he was told that the said documents were already supplied to him. In our opinion, if the representation was rejected on 17/6/2006, it was obligatory on the State Government to communicate this rejection reply to the petitioner immediately. In this connection, reference may be made to the judgment of the Supreme Court in ***Harish Pahwa v. State of Uttar Pradesh & Ors., AIR 1981 SC 1126***.

8. In ***Rama Dhondu Borade v. V.K. Saraf & Ors., 1989 (3) SCC 173,*** the representation was rejected on 27/10/1988. Rejection reply was communicated to the detenu on 31/10/1988. There was no satisfactory explanation for delay in communicating the representation. The Supreme Court took this delay into consideration while considering the overall delay and set aside the detention order. In ***Parveen Iqbal's case (supra)***, the representation was rejected on 4/5/2005. The rejection reply was communicated to the detenu on 13/5/2005. There was no explanation as regards this delay in communicating the reply. Relying on the judgments of the Supreme Court in ***Harish Pahwa's case (supra) and Rama Dhondu's case (supra),*** this court held that when the representation was rejected on 4/5/2005 the State Government had not kept it alive for supply of copies of documents and, therefore, the rejection reply ought to have been

communicated expeditiously to the detenu. The detention order was set aside on the ground of delay in communicating the rejection reply. In our opinion, the ratio of this case is attracted to the present case. No doubt, the Under Secretary has tried to explain the time taken from 17/6/2006 to 20/6/2006. However, the said explanation pertains to the petitioner's request for documents. Therefore, that explanation will not have any relevance. So far as the petitioner's contention that the delay in communicating the order of rejection of the representation is concerned, it is an independent issue. The representation having been rejected on 17/6/2006, the rejection order should have been communicated to the petitioner at the earliest. If the State Government had not rejected the representation on 17/6/2006; processed the request for supply of documents and then taken a decision as regards supply of documents and as regards revocation and, finally rejected the representation on 20/6/2006 and communicated the reply on that day, perhaps the matter would have been different. Having taken a decision on 17/6/2006 to reject the representation, the communication thereof ought to have been prompt. The communication having not been prompt, in view of the judgment of this court in ***Parveen Iqubal's case (supra)***, the order of detention must be set aside.

9. We also note that the reliance placed by the learned APP on ***Shadab Siddiq Khan's case (supra)*** is misplaced. In that case there was no grievance about delay in considering the representation or delay in communicating the rejection reply to the detenu. In that case, it was argued that there was a

request for supply of documents as well as for revocation of detention order. Request for revocation was rejected on 10/12/2004. However, detenu's request for supply of vital documents was not considered and he was directed to contact the Commissioner of Police. There was, thus, piecemeal consideration of his representation. It was argued that there was delay in considering the detenu's request for supply of documents. In that context, it was held that the State Government was right in considering the prayer for revocation expeditiously. So far as supply of documents is considered, it was observed that though the detenu was asked to contact the Commissioner of Police, the State Government asked the Commissioner to translate the documents and supply them to the detenu's advocate and they were in fact supplied. The argument that there was delay in furnishing documents or that the State Government had failed in its duty was rejected. This court observed that though there is no prescribed format of a representation when the representation is submitted through a lawyer, it should be clear and unambiguous. It was observed that assuming that a representation making dual prayer can be sent by a detenu, he cannot contend that there was a piecemeal consideration of representation because if prayer for revocation is not considered and it is kept pending for consideration of request for supply of documents it will be argued that prayer for revocation was not considered expeditiously. This judgment is not applicable to the present case because the same point is not involved here. Here there is no question of piecemeal consideration of representation. Prayer for revocation was considered but rejection reply was not communicated as was done in ***Parveen Iqbal' s case***

(supra). The State Government processed the request for supply of documents and then communicated the composite reply on 28/6/2006 informing the detenu that his prayer for revocation was rejected and so far as his request for documents is concerned, they were already supplied to the petitioner. The State Government could not have done so. The rejection reply ought to have been communicated to the petitioner on 17/6/2006 when the representation was rejected. The judgment of this court in ***Shadab Siddiq's case (supra)*** is, therefore, not applicable to the present case. The delay in communicating the rejection reply is fatal to the continued detention. The detention order will have to be set aside on that count.

ORDER

The order of detention dated 8/5/2006 issued by respondent 1 – the Commissioner of Police, Thane against the petitioner / detenu Ajay Singh @ Pappu Govardhan Singh Shekhavat is quashed and set aside. Detenu - Ajay Singh @ Pappu Govardhan Singh Shekhavat is ordered to be released forthwith unless otherwise required in any other case.

The petition is disposed of.

[SMT. RANJANA DESAI, J.]

[ANOOP V. MOHTA, J.]